

Comments submitted by Nevada Department of Taxation
(Comments are in green and purple type)

PROPOSED NAC AMENDMENTS

Chapter 368A of NAC is hereby amended by adding thereto a new section to read as follows:

*Scope of exemption for live entertainment provided in restaurant **with no admission charge imposed**: Procedure by which taxpayer may request exemption from tax pursuant to paragraph 5(q) of NRS 368A.200. (NRS 368A.200(6))*

1. Prior to claiming the exemption provided in NRS 368A.200(5)(q), a taxpayer must request and obtain an administrative ruling from the Chair of the Board affirmatively stating the live entertainment activity at issue qualifies for the exemption.

2. A request for an administrative ruling described in subsection 1 must be submitted by the taxpayer in writing and include, at a minimum, the following:

(a) A detailed description of the live entertainment activity;

(b) A statement indicating the frequency and duration of the live entertainment activity;

(c) A statement indicating the conspicuous nature of the live entertainment activity;

(d) A statement indicating the reason the live entertainment activity meets the definition of incidental or ambient;

(e) A detailed description of the area of the restaurant where the live entertainment activity is or will be provided;

~~(f) The amount of admission charge, if any, paid by a patron for the right or privilege to have access to the restaurant; and~~

(g) Any other relevant factor the taxpayer believes should be considered by the Chair of the Board when evaluating the request.

3. Should the Chair of the Board conclude the live entertainment activity does not qualify for the exemption provided in NRS 368A.200(q)(5), not later than 20 days after service of the written administrative ruling from the Chair of the Board, the taxpayer may appeal the administrative ruling to the Board for review pursuant to Nevada Gaming Commission Regulation 4.190.

4. Should the Board, after conducting a review pursuant to Nevada Gaming Commission Regulation 4.190, conclude the live entertainment activity does not qualify for the exemption provided in NRS 368A.200(q)(5), the taxpayer may, within 20 days of receiving written notice of the Board's decision, appeal the administrative ruling to the Commission for review pursuant to Nevada Gaming Commission Regulation 4.195.

5. Failure to obtain an administrative ruling under this section shall preclude the taxpayer from claiming an exemption under NRS 368A.200(5)(q).

6. Taxpayers shall have 180 days from the date this section becomes effective to submit a request for an administrative ruling regarding any live entertainment activity currently provided within restaurants located on the premises of the taxpayer.

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NAC 368A.370 is hereby amended to read as follows:

NAC 368A.370 “Patron” defined. (NRS 368A.140) “Patron” means a person who gains access to a facility where live entertainment is provided and who neither solicits nor receives, from any source, any payment, reimbursement, remuneration or other form of consideration for *being present in the facility or for* providing live entertainment at the facility.

NAC 368A.400 is hereby amended to read as follows:

NAC 368A.400 Interpretation of certain statutory terms. (NRS 368A.140) For the purposes of chapter 368A of NRS, the Board will interpret the term:

~~[1. “Admission charge” to include, without limitation, an entertainment fee, a cover charge, a table reservation fee, or a required minimum purchase of food, refreshments or merchandise.]~~

1. “Ambience” and “ambient” to mean a live entertainment activity that enhances or complements the mood, character, quality, tone, or atmosphere of a facility and which serves as an unobtrusive accompaniment to the other activities occurring within a facility.

2. “Boxing contest or exhibition” to have the meaning ascribed in NRS 467.0107 to the term “unarmed combat.”

~~[3. “Casual assemblage” to include, without limitation:~~

~~(a) Participants in conventions, business meetings or tournaments governed by chapter 463 of NRS, and their guests; or~~

~~(b) Persons celebrating a friend’s or family member’s wedding, birthday, anniversary, graduation, religious ceremony or similar occasion that is generally recognized as customary for celebration.]~~

3. “Employee” to mean a person whose compensation is required to be reported for Unemployment Compensation purposes pursuant to NRS 612.353, under an express or implied contract of hire, works in the service of either a licensed gaming establishment or the owner or operator of the facility where live entertainment is provided. The term does not include a bona fide “independent contractor”.

~~[4. “Facility” to encompass, if live entertainment is provided at a licensed gaming establishment that is licensed for:~~

~~(a) Less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, any area or premises where the live entertainment is provided and for which consideration is collected, from one or more patrons, for the right or privilege of entering that area or those premises, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises; or~~

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~~(b) At least 51 slot machines or at least 6 games, any designated area on the premises of the licensed gaming establishment within which the live entertainment is provided.]~~

4. "Immediate area" to mean any seated area from which a patron has an unobstructed view of the live entertainment activity provided.

~~[5. "Live entertainment" in the same manner as that term is interpreted pursuant to subsection 5 of NAC 368A.100. For the purposes of that subsection, the Board will interpret the term "recorded music" to include, without limitation, music on a cassette tape, compact disc, phonograph album, or video tape or disc, or on live television.]~~

5. "Incidental" to mean, for purposes of NRS 368A.200(5)(q), a live entertainment activity that is:

(a) Inconspicuous to the patrons;

(b) Not a primary element of the restaurant's operation activities;

(c) Not advertised to the public as an attraction to the restaurant; and

(d) Not the primary reason the public patronizes the restaurant.

~~[6. "Shopping mall" to include any area or premises where multiple vendors assemble for the primary purpose of selling goods or services, regardless of whether consideration is collected for the right or privilege of entering that area or those premises.]~~

6. "Occasional" to mean a live entertainment activity provided infrequently or irregularly for an aggregate time of not more than 20 minutes within a 60 minute time period.

~~[7. "Trade show" to mean an event of limited duration primarily attended by members of a particular trade or industry for the purpose of exhibiting their merchandise or services or discussing matters of interest to members of that trade or industry.]~~

7. "Performance" to mean, for purposes of NRS 368A.090(2)(b)(8), a live entertainment activity provided by a person or group of persons to a patron or group of patrons.

8. "Recorded music" to include, without limitation, music on a cassette tape, compact disc, phonograph album, or video tape or disc, or on live television.

9. "Service charge" to mean a fee or charge paid by a patron in exchange for the performance of a service useful to the patron in facilitating the purchase of admission to a live entertainment facility, or the purchase of food, refreshments, or merchandise within a live entertainment facility.

(a) In addition to the service charges listed in NRS 368A.200(2)(b), the term shall include a fee or charge paid by a patron in exchange for the convenience of purchasing an admission ticket through means other than in-person at a box office located on the premises of the taxpayer;

(b) The term shall not include the following:

(1) A fee or charge imposed to cover costs associated with the operation of a box office or live entertainment facility; or

(2) A fee or charge imposed for the holding or blocking admission tickets from sale to the general public.

(c) The burden shall be on the taxpayer to prove a patron received a useful service in exchange for the payment of the fee or charge.

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NAC 368A.520 is hereby amended to read as follows:

NAC 368A.520 Refund of overpayment of taxes. (NRS 368A.140) The provisions of NRS 463.387 shall be deemed to apply to a claim pursuant to NRS 368A.260 by a taxpayer for the refund of any overpayment of taxes, except that:

1. The claim must be filed within 3 years after the last day of the month following the reporting period for which the overpayment was made; and

2. No interest will be allowed on the overpayment if the Board determines that the overpayment was made intentionally or by reason of carelessness.

3. Any refund of any overpayment of taxes must, if possible, be refunded by the taxpayer to the patron from whom it was collected.

4. A taxpayer shall:

(a) Use all practical methods to determine any amount to be refunded pursuant to subsection 3 and the name and address of the person to whom the refund is to be made.

(b) Within 60 days after reporting to the Board that a refund must be made, make an accounting to the Board of all refunds to be paid. The accounting must be accompanied by any supporting documents required by the Board.

5. If a taxpayer is unable for any reason to refund an overpayment of taxes, the taxpayer shall pay the overpayment of taxes to the Board.

6. If an audit of a taxpayer reveals the existence of an overpayment of taxes, the Board shall:

(a) Credit the overpayment of taxes toward any deficiency that results from the audit, if the taxpayer furnishes the Board with satisfactory evidence that the taxpayer will be refunding the overpayment of taxes as required by subsection 3.

(b) Within 60 days after receiving notice from the Board that a refund must be made, seek an accounting of all refunds paid. The accounting must be accompanied by any supporting documents required by the Board.

NAC 368A.410 is hereby amended to read as follows:

NAC 368A.410 Applicability of tax: Live entertainment status; *sales of food, refreshments or merchandise*; dinner show. (NRS 368A.140)

1. Live entertainment status ***when an admission charge to the facility is imposed:***

(a) Commences at ~~the earlier of:~~

~~(1) The time when taxable live entertainment commences; or~~

~~(2) The~~ **the** time when any patron is required to pay an admission charge before the patron is allowed to enter a facility; and

(b) Ceases at ~~the later of:~~

~~(1) The~~ **the** conclusion of the last performance of the taxable live entertainment;

~~or~~

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~~(2) The time when a facility for which an admission charge was required is completely vacated by admitted patrons or is opened to the general public free of any admission charge.~~

2. Live entertainment status when no admission charge to the facility is imposed:

(a) Commences at the time when taxable live entertainment commences; and

(b) Ceases at the conclusion of the last performance of the taxable live entertainment.

[2.]3. For the purposes of this section, there is no distinction between any period of dining and any period of entertainment at a restaurant of a licensed gaming establishment which is not open on a continual time schedule and where live entertainment is provided and advertised as a dinner show.

NAC 368A.440 is hereby amended to read as follows:

NAC 368A.440 Determination of tax rate when maximum occupancy has not been designated. (NRS 368A.140) For the purposes of paragraph (c) of subsection 7 of NRS 368A.200, if there is no governmental permit designating the maximum occupancy of a facility where live entertainment is provided, the Board will compute the tax rate on the presumption that the actual seating capacity of the facility is at least ~~[300]~~ **200** and less than 7,500. To rebut this presumption, the taxpayer must establish, to the reasonable satisfaction of the Board, that the actual seating capacity of the facility is less than ~~[300]~~ **200** or 7,500 or more. In determining whether the taxpayer has successfully rebutted the presumption, the Board will consider all evidence provided by the taxpayer, including, without limitation, evidence of actual attendance, the number of tickets sold or offered for sale, the square footage of the facility, the physical needs or requirements of the patrons in relation to the nature of the live entertainment provided and any other evidence tending to establish the actual seating capacity of the facility.